D.B. Civil Special Appeal No.169/2003.
(Narendra Prasad Vs. Hemant & Others)

DATE OF JUDGMENT : October 06, 2006

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS, J.

Mr. Suresh Kumbhat for the appellant.
Mr. Anil Bachhawat for the respondent No.3.

The instant civil special appeal arises out of the judgment of the learned Single Judge dated 21.07.2003 passed in S.B. Civil Misc. Appeal No.705/2001. Before the learned Single Judge, appellant Narendra Kumar challenged the order dated 23.03.1996 passed by the Motor Accident Claims Tribunal, Dungarpur (hereinafter, 'the Tribunal') and prayed that the order dated 23.03.1996 may be set aside and the case may be remanded to the Tribunal with a direction to decide it on merit after giving opportunity to the appellant.

Before the Tribunal, alongwith others, appellant Narendra Kumar pressed motor accident claim for the compensation for having been injured in the accident which occurred in the evening on 02.10.1990. It was alleged that the appellant, alongwith others, was travelling in Mini Bus No.GQE 2295. Claimants of the said accident alleged that the driver of the bus in which they were traveling was driving the bus rashly

and negligently at a high speed and he lost control of the bus as a result of which the bus turned turtle. The appellant suffered injuries in the accident. At the trial, issues were framed for adjudication of the claims. On the determination of the issues, material facts were decided against the respondent-non-claimants as a sequel to which the claimants became entitled to receive compensation. However, the claim petitions of certain claimants, including the present appellant, were rejected by the Tribunal on the ground that they led no evidence at the trial.

On 04.10.2006, in similar circumstances, D.B. Civil Special Appeal No.167/2006 filed against order dated 21.07.2003 passed by the learned Single Judge in Civil Misc. Appeal No.703/2001, arising out of common order dated 23.03.1996 made by the Tribunal, was decided by us. The question involved in the present appeal is squarely covered by the judgment rendered by us in the aforesaid appeal.

Accordingly, following the order made by us in D.B. Civil Special Appeal No.167/2003, we allow the prayer of the appellant to remand the case to the Tribunal with further direction to decide the same on merit, after giving one opportunity to the appellant to produce evidence, within three months from the date of receipt of certified copy of this order. We order accordingly.

As a sequel to the aforesaid direction, we set aside the judgment of the learned Single Judge and also the order passed by the Tribunal qua the appellant. There shall, however, be no order as to costs.

(Gopal Krishan Vyas) J. (Rajesh Balia) J.